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HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			VAN DOREN, BETH	
			ART UNIT	PAPER NUMBER
			3623	

DATE MAILED: 08/08/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/755,635

Applicant(s)

DVORAK ET AL.

Examiner

Beth Van Doren

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 14 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 25-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 25-46 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. The following is a Final Office action in response to communications received 06/14/2006. Claim 25 has been amended. Claims 25-46 are now pending in this office action.

#### ***Response to Amendment***

2. The amendments to claim 25 are sufficient to overcome the claim objections set forth in the previous office action. Examiner notes that she inadvertently asserted claim 26, instead of claim 25 in these objections.

#### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 25-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Landvater (U.S. 6,609,101) in view of Display Unlimited ([www.displayunlimited.com](http://www.displayunlimited.com)).

As per claim 25, Landvater teaches a computer-implemented method of rolling up projected demand requirements and presentation quantities for a plurality of selling locations, including:

    naming a plurality of display types used by a plurality of selling locations (See figures 14 and 15, column 1, lines 40-50, column 2, lines 20-27, column 14, lines 25-65, column 15, lines 1-6 and 17-25, wherein profiles of display types are stored in the system);

    associating numbers of the named display types present at the selling locations with the selling locations (See figures 14 and 15, column 1, lines 40-50, column 2, lines 20-27, column

Art Unit: 3623

14, lines 25-65, column 15, lines 1-6 and 17-25, wherein the displays are associated with the location and used when forecasting demand);

associating a good and presentation dates with one or more named displays (See figures 14 and 15, column 1, lines 40-50, column 2, lines 20-27, column 14, lines 25-65, column 15, lines 1-6 and 17-25, wherein the good has a time of display);

associating respective time elements, corresponding to times for an action to lead to availability of the good at the selling locations, with the good at the selling locations (See figures 14 and 15, column 9, lines 15-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, wherein the forecast is time-phased);

looking forward from a date related to the action and rolling up projected demand requirements for one or more predetermined selling periods, which commence at one or more dates related to the respective time elements, for the good at the selling locations, while taking into account association of good with the named displays in the respective selling locations (See figures 14 and 15, column 9, lines 15-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25).

However, while Landvater discloses a number of shelf configurations, shelves versus floor displays, and storing information concerning the shelves and displays in the system, Landvater does not expressly disclose specific display fixture types and numbers of the named display fixture types present at locations.

Display Unlimited discloses different display fixture types and using these fixture types to design layouts of stores in retail environments (See pages 2-3, page 4, section 1, and page 5, section 1, which discloses fixture types and layouts of stores with multiple elements).

Art Unit: 3623

Landvater discloses alternative treatments of presentation demand (i.e. different shelf configurations) as well as different types of display (shelves and floor models). Landvater stores information concerning these presentations and displays in the system. Examiner points out that different fixtures types and the scheduling of different fixture types for store resets and remodels are well-known in the retail industry. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include data representing the fixture types of Display Unlimited in the data already stored by Landvater concerning displays and shelves in order to more accurately calculate the stock replenishments needed to maintain attractive displays by ensuring the capacity of the fixtures is accounted for. See column 14, lines 25-35 and 55-65 of Landvater.

As per claim 26, Landvater discloses wherein a user interface facilitates associating predetermined sets of respective time elements with the good at the plurality of selling locations (See column 9, lines 15-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, wherein the forecast is time-phased at a selling location).

As per claim 27, Landvater discloses wherein availability of the good includes delivery of the good from a stocking location (See figure 1, column 6, lines 45-67, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, which discloses a stocking location).

As per claim 28, Landvater teaches wherein availability further includes preparing the delivered goods for sale (See column 3, lines 10-30, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, which discloses setting up the display of the delivered good).

As per claim 29, Landvater disclosed wherein the time elements include time required to collect data, review action recommendations, process data, pick goods at a stocking location, and ship the goods to the selling location (See column 3, lines 10-30, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, column 16, lines 35-65).

As per claim 30, Landvater wherein the respective time element further include periodic dates for actions necessary to make the good available at the plurality of selling locations (See figures 8 and 9, column 4, lines 20-40 and 54-66, column 10, column 11, lines 15-35, wherein time periods for forecasting are set in the system).

As per claim 31, Landvater discloses wherein the respective time elements include time of distributing the good from one or more first level stocking locations to a plurality of second level stocking locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed among level 2 and 3 stocking locations using a time element).

As per claim 32, Landvater wherein the respective time elements include time for distributing the good from one or more first level stocking locations to a plurality of second level stocking locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed among level 2 and 3 stocking locations using a time element).

As per claim 33, Landvater teaches wherein the respective time elements include time for distributing the good from a supplier through one or more stocking locations to a plurality of selling locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-

Art Unit: 3623

25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, wherein the good is distributed from a supplier to the selling location using a time element).

As per claim 34, Landvater discloses wherein the respective time elements include time for distributing the good from a supplier through one or more stocking locations to a plurality of selling locations (See figure 1, column 3, lines 10-30, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 14, lines 25-65, wherein the good is distributed from a supplier to the selling location using a time element).

As per claim 35, Landvater discloses wherein the action includes distribution of the good from one or more stocking locations to a plurality of selling locations (See figure 1, column 6, lines 45-67, column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25, column 13, lines 30-45 and 59-67, column 14, lines 25-65, wherein the good is distributed from a stocking location to selling locations).

As per claim 36, Landvater discloses wherein the action includes ordering the good from a supplier (See figure 1, column 6, lines 45-67, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, wherein the good is ordered from a supplier).

As per claim 37, Landvater teaches wherein the action includes allocating delivery of the good after ordering from a supplier (See figure 1, column 6, lines 45-67, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, wherein deliveries of goods from suppliers are allocated).

As per claim 38, Landvater teaches wherein the projected demand is for sale of the good at the selling locations (See column 6, lines 45-67, column 8, lines 25-45, column 9, lines 1-25

Art Unit: 3623

and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, wherein projected demand is sale of the good).

As per claim 39, Landvater discloses wherein the projected demand is for a stocking level of the good at the selling locations (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss shipments to maintain specific safety stock levels).

As per claim 40, Landvater teaches wherein rolling up includes adding the presentation quantities and the projected demand requirements for the good at the selling locations (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities and demand requirements).

As per claim 41, Landvater teaches wherein the presentation quantity used in the roll up is the average presentation quantity for the location during the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities).

As per claim 42, Landvater teaches wherein the presentation quantity used in the roll up is the presentation quantity for the selling location on the first day of the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities).

As per claim 43, Landvater teaches wherein the presentation quantity used in the roll up is the presentation quantity on the day of the predetermined selling period when the good is received at the selling location (See column 8, lines 25-45, column 9, lines 1-25 and 55-67,



Art Unit: 3623

column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities).

As per claim 44, Landvater teaches wherein the presentation quantity used in the roll up is the largest presentation quantity associated with the good at the selling location for any day of the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities at the maximum and minimum acceptable levels).

As per claim 45, Landvater teaches wherein the rolling up includes selecting the larger of the presentation quantities or the projected demand requirements for the good at the selling locations (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 20-50, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities at the maximum and minimum acceptable levels).

As per claim 46, Landvater teaches wherein the presentation quantity used in the roll up is the presentation quantity for the selling location on the last day of the predetermined selling period (See column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25, which discuss presentation quantities at the maximum and minimum acceptable levels).

### ***Response to Arguments***

5. Applicant's arguments with respect to Landvater (U.S. 6,609,101) in view of Display Unlimited ([www.displayunlimited.com](http://www.displayunlimited.com)) have been fully considered, but they are not persuasive. In the remarks applicant argues that Landvater does not teach or suggest (1) named display fixture types used in retailing, (2) combining time elements to build up a supply cycle and "lead

Art Unit: 3623

time” and “safety time” does not anticipate claims 26, 29-30, 32 or 34, (3) the post-order placement allocation of claim 37, (4) Landvater teach on treatment of presentation quantities, not six alternatives as per claims 41-46, and that (5) examiner has not provided proper motivation to satisfy obviousness and Applicant questions the secondary reference, and (6) Examiner has relied on improper hindsight.

In response to argument (1), Examiner respectfully disagrees. Examiner explicitly stated that Landvater does not expressly disclose specific display fixture types and numbers of the named display fixture types present at locations. Landvater does disclose a computer based system that stores information about shelves and the setup of these shelves, as well as floor displays (even if the display is one bed), to track in the system the need for product reorders. Therefore, the shelf configurations (ie number of facings and number of shelves) are used to determined the amount of stock needed to fill the display by the system. Therefore, the “shelf configurations” of Landvater stored by the system and the “display fixture types” of the currently recited claims serve the same purpose – to determine demand requirements for goods at specific times.

As to the discussion by the applicant about Landvater disclosing “a number of shelf configurations”, examiner points out that the definition of configuration is an arrangement of parts or elements. Therefore, Examiner maintains that Landvater does disclose a number of shelf configurations, in light of this definition, since Landvater discloses the ability to store displays with different number of facings and shelves, where facings and shelves are parts and/or elements. Landvater specifically uses the language “configuration” in column 14, lines 25-35. Further, the system of Landvater is capable of recognizing floor displays for demand related

Art Unit: 3623

purposes. Whether it is one bed or 50 sitting on the floor of the store, the system still considers the demand for products to support such displays and in the same manner. Therefore, regardless of how applicant wants to construe what was intended by examiner's use of the terms configuration and floor display, the functionality of Landvater remains the same – using the number of products associated with the display to determine the need/demand for products and product stocking. In this respect, the “shelf configurations” and “floor displays” stored in the system of Landvater and the “display fixture types” of the currently recited claims serve the same purpose – to determine demand requirements for goods at specific times.

As to applicant's discussion of the secondary reference being an advertisement for hard goods, Examiner respectfully disagrees. First, the secondary reference discloses a consulting service that aids a retailer in designing and arranging displays and fixture types at his/her sales location. Second, this reference was merely relied on to teach different display fixture types and using these fixture types to design layouts of stores in retail environments (See pages 2-3, page 4, section 1, and page 5, section 1, which discloses fixture types and layouts of stores with multiple elements). Thus, this teaching is specifically relevant, since the system of Landvater is capable of storing displays in memory and Display Unlimited discloses more types of displays that were being used by retail stores at the time of the invention. Thus the display types of Display Unlimited would be able to be stored in the system of Landvater to accomplish the same end result – establishing demand for products and product stocks needed to support the display. The system of Landvater is mainly concerned with the product needs of the display.

In response to argument (2), Examiner respectfully disagrees. None of claims 26, 29-30, 32 or 34 recite “combining time elements to build up a supply cycle”. Instead, the claims

Art Unit: 3623

include limitations that clarify the term “time elements”. Examiner notes that Applicant has not addressed any specific feature recited in claims 26, 29-30, 32 or 34 that Landvater does not have. However, for clarification purposes, examiner has included a discussion of each of these claims.

Landvater specifically addresses these limitations as follows. First, Landvater expressly teaches a time-phased planning system using in a retail store supply chain with one or more retail stores (first level), one or more suppliers (second level) and one or more manufacturers. See specifically figure 1 and column 6, lines 45-67. Landvater specifically teaches associating time elements in the time-phased planning system with a good at a plurality of selling locations (See also column 9, lines 15-25 and 55-67, column 14, line 60-column 15, line 6). The time elements of the time-phased planning system include time to collect data, review action recommendations, process data, pick goods, and ship goods to the selling location (See column 3, lines 10-30, column 8, lines 25-45, column 9, lines 1-25, column 14, lines 60-67, column 16, lines 35-65, wherein data is collected in a database and processed to determine supply needs. The goods are picked to be shipped based on the goods on hand and the forecasted need for the product. The timing of the shipment is based on the lead time needed by the retailer and thus time elements concerning transit time and lead time are considered when ordering supply. Exceptions are reviewed, such as when exception messages are generated). The elements include periodic dates for actions necessary to make the good available at the plurality of selling locations (the plurality of selling locations are addressed above. Further, figures 8 and 9, column 4, lines 54-66, column 10, column 11, lines 15-35, which discuss weekly, monthly, yearly forecasting). The elements also include time to distribute the good from stocking locations to second level stocking locations and finally the time to distribute the good from a supplier through a stocking location to

Art Unit: 3623

a plurality of selling locations (See column 7, lines 1-25, column 8, lines 25-45, column 9, lines 1-25, which specifically discloses that a good is distributed among level 2 and 3 stocking locations using a time elements. The entire system of Landvater is time phased, and, as discussed above, lead time and transit time are considered in the ordering process. Thus, Landvater looks at the levels of the supply chain the item must pass through).

In response to argument (3), Examiner points out that claim 37 recites “allocating delivery of the good after ordering from a supplier” and not the post-order placement allocation per se. Landvater does discuss the process of the good being delivered from the suppliers to the retailers, such as with respect to timing. See figure 1, column 6, lines 45-67, column 8, lines 25-45, column 9, lines 1-25 and 55-67, column 13, lines 30-45 and 59-67, column 14, lines 25-65, all of which talk about acquiring a product from a supplier after the product has been ordered. If something more specific is meant, it should be clearly recited in the claims to be given appropriate patentable weight.

In response to argument (4), Examiner respectfully disagrees. Landvater discusses the amount of goods needed to create and maintain the presentation required by the retail store(s). Landvater considers all of the following: what is projected to be sold, what is projected to be shipped, stock levels based on current and future arrangement of products in displays, required safety stock levels, etc. See column 8, lines 25-45, column 10, lines 1-20, column 14, lines 25-65, column 15, lines 1-6 and 17-25. Thus, the standard, regular (i.e. average) presentation quantity for the location during the predetermined selling period is considered in the replenishment calculations by considering the required products for the display (based on shelf configurations stored in the database) and the required safety stock. The system plans for the

Art Unit: 3623

current presentation quantity needed to set up the display (and thus is also what is needed on the first day of selling the good). See also column 3, lines 10-25. Again, as per claim 43, the presentation quantity used for replenishment planning is the quantity needed for display setup and sales and thus is the total number that needs to be on hand when the good is received at the selling location. The goods have set presentation quantities in the system that are required (as well as required safety stock levels), and thus when combined to plan replenishments, this value is the largest quantity associated with the good. As per claim 45, Landvater discusses that projected demand is considered when planning replenishment quantities. Thus, projected demand is considered against the presentation quantities and requisite safety stock. Finally, Landvater teaches wherein the presentation quantity used in the roll up is the presentation quantity for the selling location on the last day of the predetermined selling period. Future changes in presentation are considered based on the future date that the change occurs. This “change date” is considered in the system, and thus the last day when the current configuration quantity is needed is also known.

In response to argument (5), Examiner respectfully disagrees. Landvater specifically discusses in column 14, lines 25-35 and 55-65 examiner’s motivation of more accurately calculating the stock replenishments. Landvater specifically addresses “the calculation of time-phased safety stock levels based on current and future arrangement of products of the shelves of retail stores 23. As explained above, planned replenishment orders which are calculated without accounting for future changes in shelf configurations will be inaccurate”. Since Display Unlimited discloses the different fixtures types and the scheduling of different fixture types for a retailer to design layouts of stores in retail environments, it would be important to incorporate

Art Unit: 3623

such well known industry fixtures in order to ensure that the planned replenishment orders account for future changes in shelf configurations, and thus are accurate.

In response to argument (6), In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Art Unit: 3623

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737.

The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

*bvd*

bvd

July 25, 2006

*Romain Janty*  
*Primary Examiner*  
*Art Unit 3623*